

Department of Energy

§ 851.43

basis for any legally enforceable requirement pursuant to this part.

(k) The Director may sign, issue and serve subpoenas.

§ 851.41 Settlement.

(a) DOE encourages settlement of a proceeding under this subpart at any time if the settlement is consistent with this part. The Director and a contractor may confer at any time concerning settlement. A settlement conference is not open to the public and DOE does not make a transcript of the conference.

(b) Notwithstanding any other provision of this part, the Director may resolve any issues in an outstanding proceeding under this subpart with a consent order.

(1) The Director and the contractor, or a duly authorized representative thereto, must sign the consent order and indicate agreement to the terms contained therein.

(2) A contractor is not required to admit in a consent order that a requirement of this part has been violated.

(3) DOE is not required to make a finding in a consent order that a contractor has violated a requirement of this part.

(4) A consent order must set forth the relevant facts that form the basis for the order and what remedy, if any, is imposed.

(5) A consent order shall constitute a final order.

§ 851.42 Preliminary notice of violation.

(a) Based on a determination by the Director that there is a reasonable basis to believe a contractor has violated or is continuing to violate a requirement of this part, the Director may issue a preliminary notice of violation (PNOV) to the contractor.

(b) A PNOV must indicate:

(1) The date, facts, and nature of each act or omission upon which each alleged violation is based;

(2) The particular requirement involved in each alleged violation;

(3) The proposed remedy for each alleged violation, including the amount of any civil penalty; and

(4) The obligation of the contractor to submit a written reply to the Director within 30 calendar days of receipt of the PNOV.

(c) A reply to a PNOV must contain a statement of all relevant facts pertaining to an alleged violation.

(1) The reply must:

(i) State any facts, explanations and arguments that support a denial of the alleged violation;

(ii) Demonstrate any extenuating circumstances or other reason why a proposed remedy should not be imposed or should be mitigated;

(iii) Discuss the relevant authorities that support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE; and

(iv) Furnish full and complete answers to any questions set forth in the preliminary notice.

(2) Copies of all relevant documents must be submitted with the reply.

(d) If a contractor fails to submit a written reply within 30 calendar days of receipt of a PNOV:

(1) The contractor relinquishes any right to appeal any matter in the preliminary notice; and

(2) The preliminary notice, including any proposed remedies therein, constitutes a final order.

(e) A copy of the PNOV must be prominently posted, once final, at or near the location where the violation occurred until the violation is corrected.

§ 851.43 Final notice of violation.

(a) If a contractor submits a written reply within 30 calendar days of receipt of a preliminary notice of violation (PNOV), that presents a disagreement with any aspect of the PNOV and civil penalty, the Director must review the submitted reply and make a final determination whether the contractor violated or is continuing to violate a requirement of this part.

(b) Based on a determination by the Director that a contractor has violated or is continuing to violate a requirement of this part, the Director may issue to the contractor a final notice of